

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA
3

4 PERRY ALLEN LAND,

5 Plaintiff,

6 v.

7 ANDREW SAUL, Commissioner of Social
8 Security,

9 Defendant.
10

No. 1:20-cv-00236-GSA

**ORDER DIRECTING ENTRY OF
JUDGMENT IN FAVOR OF DEFENDANT
COMMISSIONER OF SOCIAL SECURITY
AND AGAINST PLAINTIFF**

(Doc. 17, 18)

11
12 **I. Introduction**

13 Plaintiff Perry Allen Land (“Plaintiff”) seeks judicial review of a final decision of the
14 Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application for
15 disability insurance benefits pursuant to Title II of the Social Security Act. The matter is before
16 the Court on the parties’ briefs which were submitted without oral argument to the Honorable
17 Gary S. Austin, United States Magistrate Judge.¹ See Docs. 16, 17, 18. After reviewing the
18 record the Court finds that substantial evidence and applicable law support the ALJ’s decision.
19 Plaintiff’s appeal is therefore denied.

20 **II. Procedural Background**

21 On December 2, 2015 Plaintiff applied for disability insurance benefits. AR 282–83.
22 Plaintiff claimed disability beginning October 3, 2013 due to high blood pressure, anxiety,
23 depression, spinal fusion surgery and seizures. AR 343. The Commissioner denied the
24 application initially on May 19, 2016 and on reconsideration on August 29, 2016. AR 139, 155.

25 Plaintiff requested a hearing which was held before an Administrative Law Judge (the
26 “ALJ”) on September 6, 2018. AR 74–99. On November 14, 2018 the ALJ issued a decision
27

28 ¹ The parties consented to the jurisdiction of the United States Magistrate Judge. See Docs. 6 and 9.

1 denying Plaintiff's application. AR 25–45. The Appeals Council denied review on October 11,
2 2019. AR 7–13. On February 14, 2020 Plaintiff filed a complaint in this Court. Doc. 1.

3 **III. Factual Background**

4 **A. Plaintiff's Testimony**

5 Plaintiff had a high school education. AR 79. He did not have a driver's license and
6 relied on his sister to get around. AR 79. He did not need help showering or dressing. AR 80.
7 He did some household chores, cooked, shopped and did some yard work. AR 80. On a typical
8 day he hung out at his dad's agricultural irrigation shop and tinkered around. AR 80. He
9 previously worked as a manager at Nelson Concrete Pipe. AR 82. He operated a backhoe and
10 lifted bags of concrete weighing up to 94 pounds. AR 83. He could no longer lift that much
11 weight. AR 82. He could pick up 20 to 50 pounds and put it down, but couldn't drag it around.
12 AR 88. He could buy two bags of groceries and stop for a break halfway in between. AR 88.

13 His neck surgery helped his neck pain. AR 85. More recently he experienced pain going
14 from his right shoulder down to his back on the right side. AR 85–86. He had difficulty walking
15 and using stairs. AR 86. His equilibrium was thrown off. AR 86. He took gabapentin, Lexapro
16 and blood pressure medication. AR 87. He did not take pain medication. AR 89. He was
17 hospitalized for six days in 2015 due to seizures. AR 87. He had some mild seizures since then
18 including a seizure two weeks earlier. AR 87–88, 91. He had no problems with sitting. AR 88.
19 He could stand fine but he would get tired. AR 88. He could walk half a mile before taking a
20 break. AR 88. He had difficulty reaching overhead due to his shoulder. AR 89. He struggled
21 with anxiety. AR 89. He didn't like going to Walmart or waiting in line for two hours. AR 89.
22 When he went to a store he wanted to get in and get out. AR 89. He could not sit through an
23 entire TV program. AR 89–90. As soon as a commercial came on he switched channels. AR 90.
24 His girlfriend paid the bills. AR 90. Lexapro helped his anxiety. AR 90. He drank three to four
25 beers on a typical evening. AR 91.

26 He generally recovered from seizures after a day or so. AR 92. He didn't do many
27 chores. AR 92. He could mow a lawn for 15 minutes but then would need to stop and take a
28 break. AR 92. He experienced panic attacks but not as bad as he used to. AR 93. He used to

1 have them every day. AR 93. He had them less now but still could have as many as five in a day.
2 AR 93. Going to the mall or being in crowds triggered his anxiety. AR 93. Almost every
3 weekend he felt like he wasn't able to do anything at all. AR 93.

4 **B. Vocational Expert**

5 The VE classified Plaintiff's past employment as an irrigation system installer at the
6 medium exertional level per the DOT, and at the heavy exertional level as performed. AR 96.
7 The ALJ posed a hypothetical to the VE regarding an individual with Plaintiff's vocational profile
8 who could perform work at the light exertional level with occasional overhead pushing and
9 pulling, occasional climbing, frequent overhead reaching, and a need to avoid concentrated
10 exposure to extreme cold, heights and dangerous machinery. AR 96. The VE testified that such
11 an individual could not perform Plaintiff's past work as an irrigation system installer, but could
12 perform other jobs existing in significant numbers in the national economy including: photocopy
13 machine operator, housekeeping cleaner and parking lot attendant. AR 97. If the individual
14 were limited to simple and routine tasks, the same jobs would be available. AR 97. If the
15 individual would be off task 20% of the day, no work would be available. AR 97. If the
16 individual would be expected to miss work four days per month, no work would be available. AR
17 97.

18 **C. Medical Records**

19 Plaintiff visited Dr. Thiagarajan on August 12, 2012 with a complaint of moderate
20 radicular arm pain, myalgias, paresthesia and weakness beginning two months earlier. AR 422.
21 Dr. Thiagarajan ordered a cervical spine MRI which showed neural foraminal stenosis ranging
22 from moderate to advanced, central subarticular osteophyte disc complex, and spinal stenosis
23 ranging from moderate to severe. AR 448. On November 28, 2012 Dr. Siddique performed
24 cervical fusion surgery. AR 470, 472.

25 Plaintiff was doing well as of his May 21, 2013 post-surgery follow up visit with some
26 shoulder soreness, but no significant neck or arm pain and good range of motion. AR 782. Dr.
27 Siddique noted that an x-ray showed instrumentation was in an excellent position. AR 782. Dr.
28 Siddique stated that Plaintiff could return to work as a construction worker in two weeks. AR

1 782.

2 On July 18, 2013 Plaintiff was examined by Dr. Wlasichuk in connection with a prior
3 disability application. AR 494. Examination notes revealed cervical spine muscle tightness to
4 palpation, upper trapezius muscle spasm, 4-4+/5 upper extremity motor strength, but normal
5 muscle bulk and tone. AR 495–96. Dr. Wlasichuk assessed chronic cervical pain post-surgery
6 and opined that Plaintiff could perform no forceful pushing, pulling, overhead reaching or upper
7 gaze. AR 496. A December 9, 2013 follow up examination with Dr. Thiagarajan reflected
8 musculoskeletal findings of good range of motion, strength and tone. AR 744. Dr. Thiagarajan
9 noted that Plaintiff was doing well post-surgery and was back to work but advised against lifting
10 more than 15 pounds. AR 744.

11 On October 24, 2014 Plaintiff visited the ER with syncope. AR 786. He followed up
12 with a nephrologist, Dr. Vemuri, on November 7, 2014 who suspected syncope was related to
13 alcohol withdrawal though Plaintiff stated his last drink was ten days earlier. AR 789. He was
14 prescribed Xanax for anxiety, referred to neurology and advised not to drive until cleared by
15 neurology. AR 789. On April 3, 2015 Plaintiff followed up with Dr. Thiagarajan regarding his
16 seizures, a brain MRI found mild atrophy. AR 752. Plaintiff was admitted to Sierra View
17 District Hospital on October 8, 2015 with severe delirium tremens and seizures. AR 540. He was
18 placed in soft restraints for 24 hours. AR 540. A brain CT was negative for acute intracranial
19 abnormality. AR 681–82. He was discharged eight days later. AR 540.

20 Plaintiff followed up with Dr. Thiagarajan on December 17, 2015 with moderate intensity
21 anxiety beginning one year earlier. AR 760. He was advised not to drink and to take Lexapro
22 daily. AR 762. Plaintiff followed up with his primary care physician, Dr. Buttan, throughout
23 2017 for various conditions including anxiety and was prescribed Trazadone AR 822–33.

24 **D. Medical Opinions and Administrative Findings**

25 On April 20, 2017 Plaintiff's primary care provider, Dr. Buttan, completed a physical
26 medical source statement. AR 778–780. Dr. Buttan opined that Plaintiff could lift and/or carry
27 twenty pounds frequently, stand and walk without limitation, sit six hours in an eight-hour
28 workday, never climb ladders, rarely crouch/squat and climb stairs, occasionally twist and

1 frequently stoop. AR 779. Dr. Buttan opined that Plaintiff had no significant limitations with
2 reaching, handling or fingering. AR 779. Dr. Buttan identified psychological conditions of
3 depression, anxiety and personality disorder. AR 780. Dr. Buttan opined that Plaintiff was
4 incapable of even low stress jobs and would miss more than four days per month from work due
5 to impairments or treatment. AR 780.

6 On April 18, 2016 Dr. Izzi performed a consultative psychiatric examination. AR 772–75.
7 Plaintiff had dysphoric affect, could recall one of three words on delay and could not spell
8 “world” backwards. AR 773. Dr. Izzi diagnosed unspecified anxiety disorder. AR 774. Dr. Izzi
9 opined that Plaintiff could consistently perform simple and repetitive tasks but had moderate
10 limitations in his ability to get along with peers or be supervised in a work like setting. AR 774.

11 On March 14, 2016 Dr. Siekerkotte performed a consultative internal medicine
12 examination. AR 766–69. Plaintiff reported that his cervical fusion surgery was successful but
13 that he still had limitations including inability to lift items overhead. AR 766. Dr. Siekerkotte
14 noted decreased shoulder range of motion. AR 769. She diagnosed bilateral shoulder pain, back
15 pain and seizures. AR 768. She opined, in relevant part, that Plaintiff was limited to occasional
16 overhead and forward reaching due to decreased shoulder range of motion. AR 769.

17 On April 8, 2016 non-examining state agency medical consultant I. Ocrant, MD reviewed
18 Plaintiff’s medical file at the initial level and opined, in relevant part, that Plaintiff was limited to
19 occasional overhead pushing, pulling and reaching based on limited shoulder mobility due to
20 cervical spine degenerative disc disease. AR 134–35. On August 26, 2016 non-examining state
21 agency medical consultant L. Kiger, MD reviewed Plaintiff’s medical file at the reconsideration
22 level and concurred with Dr. Ocrant’s assessment except as to overhead reaching, which Dr.
23 Kiger opined Plaintiff could perform frequently. AR 151.

24 In May 2016 and August 2016, non-examining state agency psychiatric consultants E.
25 Aquino-Caro, MD and J. Collado, MD reviewed plaintiff’s psychiatric treatment records at the
26 initial and reconsideration levels, respectively. Both opined that Plaintiff’s mental impairments
27 were non-severe. AR 132, 148.
28

1 **IV. Standard of Review, Generally**

2 Pursuant to 42 U.S.C. §405(g), this court has the authority to review a decision by the
3 Commissioner denying a claimant disability benefits. “This court may set aside the
4 Commissioner’s denial of disability insurance benefits when the ALJ’s findings are based on
5 legal error or are not supported by substantial evidence in the record as a whole.” *Tackett v.*
6 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999) (citations omitted). Substantial evidence is evidence
7 within the record that could lead a reasonable mind to accept a conclusion regarding disability
8 status. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971). It is more than a scintilla, but less
9 than a preponderance. *See Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996) (internal citation
10 omitted). When performing this analysis, the court must “consider the entire record as a whole
11 and may not affirm simply by isolating a specific quantum of supporting evidence.” *Robbins v.*
12 *Social Security Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (citations and internal quotation marks
13 omitted).

14 If the evidence could reasonably support two conclusions, the court “may not substitute its
15 judgment for that of the Commissioner” and must affirm the decision. *Jamerson v. Chater*, 112
16 F.3d 1064, 1066 (9th Cir. 1997) (citation omitted). “[T]he court will not reverse an ALJ’s
17 decision for harmless error, which exists when it is clear from the record that the ALJ’s error was
18 inconsequential to the ultimate nondisability determination.” *Tommasetti v. Astrue*, 533 F.3d
19 1035, 1038 (9th Cir. 2008) (citations and internal quotation marks omitted).

20 **V. The Disability Standard**

21 To qualify for benefits under the Social Security Act, a plaintiff must establish that
22 he or she is unable to engage in substantial gainful activity due to a medically
23 determinable physical or mental impairment that has lasted or can be expected to
24 last for a continuous period of not less than twelve months. 42 U.S.C. §
25 1382c(a)(3)(A). An individual shall be considered to have a disability only if . . .
26 his physical or mental impairment or impairments are of such severity that he is
27 not only unable to do his previous work, but cannot, considering his age,
28 education, and work experience, engage in any other kind of substantial gainful

1 work which exists in the national economy, regardless of whether such work exists
2 in the immediate area in which he lives, or whether a specific job vacancy exists
3 for him, or whether he would be hired if he applied for work.

4 42 U.S.C. §1382c(a)(3)(B).

5 To achieve uniformity in the decision-making process, the Commissioner has established
6 a sequential five-step process for evaluating a claimant's alleged disability. 20 C.F.R. §§
7 416.920(a)-(f). The ALJ proceeds through the steps and stops upon reaching a dispositive finding
8 that the claimant is or is not disabled. 20 C.F.R. §§ 416.927, 416.929.

9 Specifically, the ALJ is required to determine: (1) whether a claimant engaged in
10 substantial gainful activity during the period of alleged disability, (2) whether the claimant had
11 medically determinable "severe impairments," (3) whether these impairments meet or are
12 medically equivalent to one of the listed impairments set forth in 20 C.F.R. § 404, Subpart P,
13 Appendix 1, (4) whether the claimant retained the residual functional capacity ("RFC") to
14 perform his past relevant work, and (5) whether the claimant had the ability to perform other jobs
15 existing in significant numbers at the national and regional level. 20 C.F.R. § 416.920(a)-(f).
16 While the Plaintiff bears the burden of proof at steps one through four, the burden shifts to the
17 commissioner at step five to prove that Plaintiff can perform other work in the national economy,
18 given her RFC, age, education and work experience. *Garrison v. Colvin*, 759 F.3d 995, 1011 (9th
19 Cir. 2014).

20 **VI. The ALJ's Decision**

21 At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity
22 from his alleged disability onset date of October 3, 2013 through his date last insured of June 30,
23 2017. AR 30. At step two, the ALJ found that Plaintiff had the following severe impairments:
24 cervical degenerative disc disease, status post C4-6 anterior cervical discectomy and fusion,
25 syncope, obesity, alcohol abuse, and anxiety. AR 30. The ALJ found that Plaintiff's
26 hypertension was non-severe. AR 31. At step three, the ALJ found that Plaintiff did not have an
27 impairment or combination of impairments that met or medically equaled the severity of one of
28 the impairments listed in 20 C.F.R. Part 404, Subpart P, Appendix 1. AR 31. Prior to step four,

1 the ALJ evaluated Plaintiff's residual functional capacity (RFC) and concluded that Plaintiff had
2 the RFC to perform light work as defined in 20 C.F.R. 404.1567(b), with occasional overhead
3 pushing and/or pulling, frequent overhead reaching; occasional climbing; no concentrated
4 exposure to extreme cold, heights or dangerous machinery; and a limitation to simple and routine
5 tasks. AR 32–37. At step four, considering Plaintiff's RFC, the ALJ found that Plaintiff could
6 not perform his past relevant work as an irrigation systems installer. AR 37. At step five, the
7 ALJ found that Plaintiff could perform other jobs existing in significant numbers in the national
8 economy: photocopy machine operator, housekeeping cleaner and parking lot attendant. AR 38.
9 Accordingly, the ALJ found that Plaintiff had not been under a disability from his alleged
10 disability onset date of October 3, 2013 through his date last insured of June 30, 2017. AR 39.

11 **VII. Issues Presented**

12 Plaintiff alleges two errors in the ALJ's analysis. First, Plaintiff contends the ALJ failed
13 to offer sufficient reasoning for departing from the examining source opinion of Dr. Izzi
14 regarding Plaintiff's moderately limited ability to get along with peers, or be supervised in a
15 work-like setting. Br. at 5–6, Doc. 16. Second, Plaintiff contends that the ALJ failed to offer
16 sufficient reasoning for discounting the opinions of Drs. Siekerkotte, Ocrant and Kiger as to
17 Plaintiff's limited ability to reach forward or overhead. Br. at 6–8.

18 **A. Applicable Law**

19 Before proceeding to step four, the ALJ must first determine the claimant's residual
20 functional capacity. *Nowden v. Berryhill*, No. EDCV 17-00584-JEM, 2018 WL 1155971, at *2
21 (C.D. Cal. Mar. 2, 2018). The RFC is “the most [one] can still do despite [his or her] limitations”
22 and represents an assessment “based on all the relevant evidence.” 20 C.F.R. §§ 404.1545(a)(1),
23 416.945(a)(1). The RFC must consider all of the claimant's impairments, including those that are
24 not severe. 20 C.F.R. §§ 416.920(e), 416.945(a)(2); Social Security Ruling (“SSR”) 96–8p.

25 A determination of residual functional capacity is not a medical opinion, but a legal
26 decision that is expressly reserved for the Commissioner. See 20 C.F.R. §§ 404.1527(d)(2) (RFC
27 is not a medical opinion), 404.1546(c) (identifying the ALJ as responsible for determining RFC).
28

1 “[I]t is the responsibility of the ALJ, not the claimant’s physician, to determine residual
2 functional capacity.” *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001). In doing so, the
3 ALJ must determine credibility, resolve conflicts in medical testimony and resolve evidentiary
4 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039–40 (9th Cir. 1995).

5 “In determining a claimant’s RFC, an ALJ must consider all relevant evidence in the
6 record such as medical records, lay evidence and the effects of symptoms, including pain, that are
7 reasonably attributed to a medically determinable impairment.” *Robbins*, 466 F.3d at 883. *See*
8 *also* 20 C.F.R. § 404.1545(a)(3) (residual functional capacity determined based on all relevant
9 medical and other evidence). “The ALJ can meet this burden by setting out a detailed and
10 thorough summary of the facts and conflicting evidence, stating his interpretation thereof, and
11 making findings.” *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989) (quoting *Cotton v.*
12 *Bowen*, 799 F.2d 1403, 1408 (9th Cir. 1986)).

13 For applications filed before March 27, 2017, the regulations provide that more weight is
14 generally given to the opinion of treating physicians, which are given controlling weight when
15 well supported by clinical evidence and not inconsistent with other substantial evidence. 20
16 C.F.R. § 404.1527(c)(2); *see also Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995), as amended
17 (Apr. 9, 1996) (noting that the opinions of treating physicians, examining physicians, and non-
18 examining physicians are entitled to varying weight in residual functional capacity
19 determinations). An ALJ may reject an uncontradicted opinion of a treating or examining
20 physician only for “clear and convincing” reasons. *Lester*, 81 F.3d at 831. In contrast, a
21 contradicted opinion of a treating or examining physician may be rejected for “specific and
22 legitimate” reasons. *Id.* at 830. In either case, the opinions of a treating or examining physician
23 are “not necessarily conclusive as to either the physical condition or the ultimate issue of
24 disability.” *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999).
25 Regardless of source, all medical opinions that are not given controlling weight are evaluated
26 using the following factors: examining relationship, treatment relationship, supportability,
27 consistency, and specialization. 20 C.F.R. § 404.1527(c). The opinion of a non-examining
28 physician (such as a state agency physician) may constitute substantial evidence when it is

1 “consistent with independent clinical findings or other evidence in the record.” *Thomas v.*
2 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002).

3 **B. Dr. Izzi’s Opinion Regarding Non-Exertional Limitations**

4 On April 18, 2016, Dr. Izzi performed a consultative psychiatric examination. AR 772–
5 75. Plaintiff had dysphoric affect, could recall one of three words on delay and could not spell
6 “world” backwards. AR 773. Dr. Izzi diagnosed unspecified anxiety disorder. AR 774. Dr. Izzi
7 opined that Plaintiff could consistently perform simple and repetitive tasks, but had moderate
8 limitations in his ability to get along with peers or be supervised in a work-like setting due to his
9 mood disorder. AR 774.

10 The ALJ accorded Dr. Izzi’s opinion “significant weight” but only included the limitation
11 regarding simple and repetitive tasks in Plaintiff’s RFC. AR 32. The ALJ did not include the
12 moderate limitations Dr. Izzi identified regarding Plaintiff’s ability to get along with peers or be
13 supervised in a work-like setting. AR 32. Plaintiff contends that this amounted to an
14 impermissible rejection of Dr. Izzi’s specified limitations without explanation. Br. at 5.
15 Alternatively, Plaintiff contends that the ALJ may have simply overlooked the moderate social
16 limitations in Dr. Izzi’s opinion which would be harmful error considering the VE was not asked
17 whether those limitations would affect Plaintiff’s ability to perform other work. *See Embrey v.*
18 *Bowen*, 849 F.2d 418 (9th Cir. 1988); *Thomas v. Chater*, No. CIV. 96-20690 SW PVT, 1997 WL
19 383172, at *3 (N.D. Cal. July 2, 1997) (noting that an ALJ may rely on the testimony of a VE as
20 substantial evidence only if the hypothetical question posed to the VE includes all of Plaintiff’s
21 limitations).

22 Defendant acknowledges that the ALJ did not explicitly discount those moderate social
23 limitations but argues that such limitations are nevertheless unsupportable by the record because
24 Plaintiff himself reported he was able to get along “good” with authority figures and routinely
25 associated with others without difficulty. Resp. at 7, Doc. 17. Finally, in reply, Plaintiff argues
26 that Defendant’s observation is an impermissible post-hoc rationalization because “[t]he ALJ did
27 not cite such evidence nor draw inferences arising therefrom when implicitly rejecting portions of Dr.
28 Izzi’s opinion.” Reply at 2, Doc. 18.

1 Contrary to Plaintiff's assertion, the ALJ did indeed cite the statements from Plaintiff's
2 function report noting that Plaintiff "admitted having no problems getting along with family, friends,
3 neighbors, or others," and was "'good' at getting along with authority figures." AR 33 (citing Exhibit
4 9E, AR 357-65). The ALJ simply cited these statements at a different portion of her opinion. The
5 ALJ discussed the contents of Plaintiff's function report and his oral testimony in finding that they
6 undermined "the severity of the claimant's alleged limitations," including his alleged limitations in
7 "social functioning." AR 33. That conclusion applies with equal logical force to Dr. Izzi's opinion
8 regarding Plaintiff's social functioning, though the ALJ did not reiterate that reasoning in her
9 subsequent discussion of Dr. Izzi's opinion.

10 Plaintiff's assertion that the ALJ did not "draw inferences arising" from those facts "when
11 implicitly rejecting portions of Dr. Izzi's opinion" is not well taken. No inferential leaps are required
12 in order to make a connection between the contents of Plaintiff's function report and Dr. Izzi's
13 opinion on his social limitations. Dr. Izzi opined that Plaintiff was moderately limited in his ability to
14 get along with peers or accept supervision, while Plaintiff reported that he had no difficulty getting
15 along with others and got along "good" with authority figures. Plaintiff's function reported directly
16 undermines Dr. Izzi's opinion even though the ALJ made no explicit connection between the two.
17 The ALJ did not err in omitting social limitations from Plaintiff's RFC, a conclusion which was
18 supported by the non-examining physicians (who identified no severe mental impairments) and by
19 Plaintiff's own function report. *See Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (noting
20 that the opinion of a non-examining physician (such as a state agency physician) may constitute
21 substantial evidence when it is "consistent with independent clinical findings or other evidence in
22 the record.").

23 **C. Drs. Siekerkotte, Ocrant and Kiger's Opinions Regarding Reaching**

24 Dr. Siekerkotte (the CE) opined, in relevant part, that Plaintiff was limited to occasional
25 overhead reaching and occasional forward reaching due to decreased shoulder range of motion.
26 AR 769. Non-examining state agency medical consultant I. Ocrant, MD opined that Plaintiff was
27 limited to occasional overhead pushing, pulling and reaching based on limited shoulder mobility.
28

1 AR 134–35. Non-examining state agency medical consultant L. Kiger, MD concurred with Dr.
2 Ocrant’s assessment except as to overhead reaching which Dr. Kiger opined Plaintiff could
3 perform frequently. AR 151. Plaintiff contends the ALJ erred in rejecting these opinions without
4 explanation in that she limited Plaintiff to frequent overhead reaching, not occasional overhead
5 reaching or occasional forward reaching.
6

7 One clarification is necessary at the outset, namely that the ALJ did not reject all three
8 opinions. Rather, she adopted the occasional overhead push/pull limitation consistent with all
9 three opinions and adopted the frequent overhead reaching limitation identified by Dr. Kiger (but
10 not the occasional overhead reaching limitation identified by the other two, or the occasional
11 forward reaching limitation identified by Dr. Siekerkotte). Although Dr. Kiger noted that
12 Plaintiff’s “OH [overhead] activities” were limited to “occ” (occasional), he made that notation in
13 the exertional limitation’s subheading for “push and/or pull.” AR 150. Under the manipulative
14 limitation section, Dr. Kiger opined that Plaintiff’s ability to reach in any direction was “limited
15 to frequent d/t DROM of the shoulders.” AR 151. Thus, the ALJ did not reject Dr. Kiger’s
16 opinion. Rather, she incorporated the same limitations Dr. Kiger identified on overhead
17 activities, namely occasional pushing/pulling and frequent reaching.
18
19

20 The ALJ did not articulate the subtle differences in the three opinions regarding Plaintiff’s
21 limitations on reaching, nor did she overtly explain her reasoning for limiting Plaintiff to frequent
22 overhead reaching as opposed to occasional. Rather, she noted that she gave “significant weight
23 to the opinions of the internal medicine consultative examiner and the State agency physical
24 medical consultants,” opinions which were “generally consistent in that they all assess the
25 claimant is able to perform a range of work at the light exertional level with some differences in
26 the degree of specific function-by-function limitations.” AR 36. She further noted that “[n]o
27 single assessment has been completely adopted as the residual functional capacity determined
28

1 herein. The undersigned has adopted those specific restrictions on a function-by-function basis
2 that are best supported by the objective evidence as a whole.” AR 36.

3
4 As to the objective evidence as a whole, the ALJ cited pertinent medical records noting
5 that Plaintiff did well post cervical spine surgery, he exhibited good range of motion on
6 examination, his instrumentation was in excellent position upon follow-up x-ray, and his physical
7 examinations were generally unremarkable. AR 34–35 (citing Ex. 9F, 12F, 17F, 16F/2, 22F).
8 The ALJ did however acknowledge Plaintiff’s testimony that he had difficulty lifting overhead
9 with his right shoulder. AR 89 (“With my right arm, yes . . . It’s hard for me just to change a
10 light bulb.”). The ALJ reasonably accounted for Plaintiff’s objectively documented and self-
11 reported difficulties with overhead activities and limited him to occasional overhead
12 pushing/pulling and frequent reaching.

13
14 Although the ALJ did not fully incorporate Drs. Siekerkotte and Ocrant’s identified
15 reaching limitations, the ALJ incorporated their opinions in virtually every other respect,
16 including sitting/standing/walking (6 of 8 hours), lifting/carrying (20 lbs occasionally and 10 lbs
17 frequently), pushing/pulling (occasional overhead), postural activities (occasional climbing), and
18 environmental limitations (no extreme cold, heights or dangerous machinery). In the limited
19 respects that the ALJ’s RFC differed from the opinions of Drs. Siekerkotte and Ocrant (regarding
20 occasional overhead and forward reaching) the RFC was supported by the opinion of Dr. Kiger
21 and was reasonably supported by the objective medical evidence cited by the ALJ. In sum, the
22 RFC was supported by substantial evidence. *See Thomas*, 278 F.3d at 957 (noting that the
23 opinion of a non-examining physician (such as a state agency physician) may constitute
24 substantial evidence when it is “consistent with independent clinical findings or other evidence in
25 the record.”).

26
27
28 **VIII. Order**

1 For the reasons stated above, the Court finds that substantial evidence and applicable law
2 support the ALJ's conclusion that Plaintiff was not disabled. Accordingly, Plaintiff's appeal from
3 the administrative decision of the Commissioner of Social Security is denied. The Clerk of Court
4 is directed to enter judgment in favor of Defendant Andrew Saul, Commissioner of Social
5 Security, and against Plaintiff Perry Allen Land.
6

7
8 IT IS SO ORDERED.

9 Dated: May 3, 2021

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE